

IN THE MATTER OF : BEFORE THE
STEVE BOWERS : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 08-030V

.....

DECISION AND ORDER

On July 7, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Steve Bowers for a variance to reduce the 10-foot lot-line setback to zero feet for a 73.5-inch high closed fence in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Steve Bowers and Andrew Jones testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the west side of View Top Road and is also known as 3978 View Top Road (the "Property"). The Property is located in the 2nd Election District and is identified on Tax Map 24, Block 17, as Parcel 1126.

2. The .687-acre, slightly irregular shaped Property is part of the Tarasca Schlee subdivision. It is about 109 feet wide. The south lot line is about 328 feet deep, the north, about 260 feet deep. It is improved with a two-story single-family detached dwelling situated about mid-center on the lot. A 73.5-inch high fence runs behind the dwelling, and partly along the side lot lines.

3. Vicinal Properties. All vicinal properties are also zoned R-20 and are improved with single-family detached dwellings. During my site visit, it appeared that the adjoining property to the north and other properties in the neighborhood are either about the same size and shape or smaller.

4. The Petitioner is requesting a retroactive variance to reduce the 10-foot accessory structure side lot line setback required by Section 108.D.c(1)(c) to zero feet for the existing 73.5-inch high closed fence.

5. Andrew Jones, the fence contractor, testified that the fence is higher than represented by the manufacturer.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance does not comply with Sections 130.B.2.a(1) through (4), and therefore must be denied.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is relatively large compared to most of the other area lots in the same subdivision and neighborhood. When questioned, the Petitioner offered no evidence or testimony of Property's uniqueness and why it causes him practical difficulty or unnecessary hardship in complying with the 10-foot setback, where there appears to be ample room on the

site to relocate the offending fence outside the 10-foot setback. The Petitioner therefore fails to meet the first prong of the variance test.

2. Section 130.B.2.a(2) requires me to determine that the granting of the variances will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare. The purpose of the 10-foot setback is to ensure an adequate buffer between accessory structures and adjoining properties and uses. There being a legislative presumption that encroachments into the 10-foot setback will impair the use of adjacent property, and where, as here, the offending fence is directly on side property lines, I conclude the proposed accessory structure, as varied, will necessarily impair the appropriate use of adjacent property, contrary to Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Petitioner's action or actions under his control. As such, the practical difficulties or hardships are self-created, contrary to Section 130.B.2.a(3).

4. Section 130.B.2.a(4) requires me to determine if the requested variance is the minimum necessary to afford relief. I must necessarily conclude it is not. Under this standard, the requested variance must be the minimum that will make possible the reasonable use of land, building, or structures. Because the fence may be modified to comply with the setback or relocated elsewhere on the site, the requested setback variance is not the minimum necessary.


ORDER

Based upon the foregoing, it is this **21st day of July 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Steve Bowers for a variance to reduce the 10-foot accessory structure lot line setback to zero feet an existing, approximately 73.5-inch high closed fence in an R-20 (Residential: Single) Zoning District is **DENIED**.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed:

7/27/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.